

COMPLAINT

5. The acts of omission and commission causing injuries to the Plaintiff were done by

the defendant, their agents, servants, workmen and/or employees acting in the course and scope of their employment with and under the direct and exclusive control of the defendant.

6. The Plaintiff was employed by defendant railroad and was acting in the scope of his employment by the defendant as a machinist and was engaged in the furtherance of interstate commerce within the meaning of said Act.

7. All the property, equipment and operations involved in Plaintiff's injury were owned and/or under the direct and exclusive control of the defendant, their agents, servants, workmen and/or employees.

8. On or about February 13, 2019, at approximately 1:45 pm at Penn Station – NY, Plaintiff was a machinist. Plaintiff was instructed to inspect motors on Track 5D in Penn Yard. Plaintiff repeatedly asked if it was safe to go down to Track 5D and was told it was by Amtrak supervision. As Plaintiff was going to inspect the motor, a train rushed towards him on Track 5D. To save himself, Plaintiff jump under the motor he was inspecting to get out of the way. As a result of this action, Plaintiff suffered severe trauma physically to his right knee, his spine and his mental and emotional health.

9. Plaintiff's injuries were caused in whole or in part by the negligence, carelessness and recklessness of the defendant and their agents, servants, workmen and/or employees, acting within the scope of their employment, which negligence consisted of the following:

- a) in failing to provide the plaintiff with a safe place to work as required by the Federal Employers' Liability Act, Title 45 U.S.C. Secs. 51-60.
- b) in failing to comply with safety rules and regulations of the defendant.
- c) in failing to comply with the operating rules and regulations of the defendant.
- d) in failing to ensure that trains are not operating on tracks while workers are working on the tracks;

- e) failure to communicate with the train dispatcher regarding the work activity
- f) failure to communicate with the train crew that an employee was working in the area of travel;
- g) failure of train crew to travel under restricted speed as required through a ground/track level work area;
- h) failure to provide on-track protection to its employees; and
- i) in failing to comply with the applicable government regulations regarding the safety of on-track machines and the Road Worker Protection Act

10. As a result of the aforesaid, Plaintiff suffered injuries to his right knee and spine and has Post Traumatic Stress Disorder (PTSD) from this event.

11. As a result of the aforesaid, Plaintiff had incurred a medically determinable physical and mental impairment which prevents Plaintiff from performing all or substantially all the material acts and duties which constitute his usual and customary work and limits his mobility and daily activities as well as enjoyment of life.

12. As a direct result of the defendants' negligence, through their agents, servants, workmen and/or employees, the Plaintiff was unable to attend to his usual duties and occupations, all of which caused substantial financial loss.

WHEREFORE, the Plaintiff demands judgment against the defendants in an amount in excess of ONE HUNDRED FIFTY THOUSAND DOLLARS, (\$150,000.00).

KELLER & GOGGIN, P.C.
BY: /s/ James M. Duckworth
James M. Duckworth
Counsel for Plaintiff

Dated: January 24, 2022